

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MIRIAM BRIGGS-MUHAMMAD,

Plaintiff,

v.

SSM HEALTHCARE CORP. *et al.*,

Defendants.

ORDER

13-cv-831-wmc
App. No. 13-3909

Plaintiff Miriam Briggs-Muhammad filed a civil action alleging that the defendant, SSM Healthcare Corporation, doing business as St. Mary's Hospital, was responsible for her daughter's wrongful death in 2004. Noting that the complaint was well outside the governing statute of limitations, *see* Wis. Stat. § 893.55(1m), the court dismissed the case with prejudice as untimely and legally frivolous. Briggs-Muhammad has filed a notice of appeal. Because she has not paid the \$505.00 appellate docketing fee, she presumably requests leave to proceed *in forma pauperis* on appeal.

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that she is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). Although Briggs-Muhammad appears to qualify as indigent, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous. *See Lee v.*

Clinton, 209 F.3d 1025, 1026-27 (7th Cir. 2000). To the extent that Briggs-Muhammad is attempting to raise on appeal the same legally frivolous claims she raised in her complaint, the court certifies that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). Accordingly, her implicit request for leave to proceed *in forma pauperis* on appeal must be denied.

ORDER

IT IS ORDERED that:

1. The court CERTIFIES that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3).
2. Plaintiff Miriam Briggs-Muhammad's request for leave to proceed *in forma pauperis* on appeal is DENIED.
3. Although this court has certified that the appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), Briggs-Muhammad is advised that she may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within thirty (30) days of the date of this order.

Entered this 7th day of January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge